**HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**WRIT PETITION NO: 23413 of 2004**

Dated: 01-08-2007

Between:

Sri Bala Tripura Sundari Aqua Products
Pvt., Limited, rep., by its Managing Director,
Kakinada, E.G. District.

**..... PETITIONER**

AND

The A.P.E.D.C.Limited,
Rep., by its Managing Director,
Daba Gardens,
Visakhapatnam and another.

**.....RESPONDENTS**

**HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**WRIT PETITION No. 23413 of 2004**

**O R D E R:**

This writ petition is filed questioning the letter No.AAO /ERO/ SLO/JAO-I/US/SUB.ERO/PTP/D.No.1395/2004, dated 06-10-2004 of second respondent, whereunder the petitioner is called upon to pay a sum of Rs.3,55,468.91 ps. within 30 days from the date of receipt of the letter.

Initially, the petitioner was served with a notice dated 06-10-2003 on the basis of the alleged inspection made on 26-06-2003, whereunder the petitioner was called upon to pay the said amount of Rs.3,55,468.91ps. within 15 days from the date of receipt of notice. Questioning the said notice, the petitioner herein filed W.P.No.24807 of 2003. The said writ petition was allowed by this Court, along with other similar writ petitions by order, dated 20-07-2004, and it is appropriate to extract the relevant portion of the order:

> "Having considered the submissions made and also on perusal of the material on record, it appears that the impugned notice dated 06-10-2003 is issued in pursuance of the inspection made on 26-06-2003. On the face of it, there is no prior show cause notice or any opportunity was given to the petitioners to explain as to why they should not be made liable for shortfall or the excess use of the energy. It is also submitted on

behalf of the petitioners that they have filed representations before the second respondent, which are still pending. Having regard to such serious disputes, it would suffice in the interest of justice to direct the respondents to give a detailed fresh notice calling upon the petitioners to make payment thereof, for which the petitioners can file an explanation and the respondents can pass an order after considering the same and after giving an opportunity to the petitioners to explain the same. However, it is needless to mention that till the entire exercise is completed no coercive steps shall be taken for recovery of the amount."

Purporting to act upon the said order, second respondent issued the impugned letter, which reads as under:

"During the inspection by Accounts Officer/Revenue/Circle Office/Rajahmundry on 26-06-2003 on received of Cat.III services. The shortfall billing of Rs.3,55,468-91 ps. in respect of SC No.1047 of Chodipallipeta is noticed due to that if the actual connected load for lighting purpose exceed prorata to the lighting load shall be billed at the L.T.Category-II highest slab rate for Category-III services during period of 1/99 to 7/2003 of Rs.3,55,468-91 ps. as per tariff conditions on that you went to the High Court of A.P. and filed W.P.No.24807 of 2003.

As per the common order dated 12-07-2004 by Hon'ble High Court here by instructed to fresh notice issued calling upon you to make payment of due amount of Rs.3,55,468-91ps. (i.e.) loss sustained to the A.P.S.E. Board (Now A.P.E.P.D.C.Ltd.,) due to exceeded load used more than contracted load.

As per the order of the Hon'ble A.P. High Court in writ petition Nos.24798, 24800, 24803 and 24807 you are here by calling upon to pay

> the due amount of Rs.3,55,468-91 ps. from the date of order to till to date you have not been paid.
>
> Again a opportunity is given to you as per Hon'ble A.P. High Court common order for payment of above shortfall may please be arranged to pay with in 30 days from the date of receipt of this letter failing which your service will be ordered for disconnection without further intimation."

Heard Sri E.V.V.S.Ravi Kumar, learned counsel for the petitioner and Sri A.B.S. Reddy, advocate, representing learned standing counsel appearing for the respondents

A reading of the aforementioned letter shows that the second respondent has completely failed to understand the scope of the order passed by this Court in W.P.No.24807 of 2003. Instead of issuing a notice calling upon the petitioner to show cause why the proposed amount shall not be recovered, the second respondent appeared to have treated the demand notice itself as a notice and issued the impugned letter calling upon the petitioner to pay an amount of Rs.3,55,468-91 ps. The second respondent evidently failed to understand the distinction between a notice calling upon the party to show cause why amount shall not be recovered and a demand, which is termed as a notice to pay the amount without an opportunity to the party to submit his explanation against the proposed demand.

Sri A.B.S.Reddy, learned counsel representing the respondents fairly conceded that second respondent thoroughly misconceived the scope of the order of this Court passed in the previous writ petition and instead of giving action oriented notice before making a demand, he repeated the illegality committed earlier by straightaway calling upon the petitioner to pay the amount. He therefore, requests the Court to set aside

the order giving liberty to the respondents to issue a notice and opportunity to the petitioner against the proposed demand and take action after considering the explanation, if any, submitted by the petitioner.

In view of the above, the writ petition is allowed. The impugned demand notice is set aside giving liberty to the respondents to give a fresh notice to the petitioner, consider the representation, if any, made by it and pass appropriate orders thereafter. No costs.

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C.V.NAGARJUNA REDDY,J

Date: 01-08-2007
KLP